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AUTHOR Federlein, Anne Cairns
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ABSTRACT

Written as a quick reference for busy persons interested in the legal issues in child care, this booklet in no way pretends to be a legal authority on the issues, but was designed to serve as a practical guide. Content is based on questions frequently asked in the summer of 1986 during the Legal Issues Seminars held by Child Development Designs, Inc., and attended by administrators, teachers, corporate employers, and parents. Discussion of children's issues focuses on high quality programs, records on children and families, right to privacy, medical care, custody, child abuse and neglect, and handicapped children. Organizational issues are discussed in terms of the organization of the day care center, insurance, contracts, liability, and licensing. Personnel issues explored concern interviewing, dismissal, wages, benefits, and contracts. (RH)

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LEGAL ISSUES IN EARLY CHILDHOOD CENTERS

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By Anne Cairns Federlein, Ph. D.

Edited By Walter J. Federlein, J. D.

TABLE OF CONTENTS

Chapter	Page
INTRODUCTION	1
CHILDREN'S ISSUES	
Quality Programs	3
Records and Right to Privacy	4
Medical Care	4
Custody	7
Child Abuse and Neglect	9
Handicapped Children	12
ORGANIZATIONAL ISSUES	
Organization of Center	14
Insurance	15
Contracts	17
Liability	18
Licensing	19
PERSONNEL ISSUES	
Interviewing	21
Dismissal	22
Wages, Benefits, Contracts	23
BIBLIOGRAPHY	
References	26

LEGAL ISSUES
IN EARLY CHILDHOOD CENTERS

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INTRODUCTION

The administration of early childhood centers has become increasingly difficult over the past ten years. Escalating costs, insurance cancellations, providing expanded programs and hours to meet the changing needs of families have contributed to the restructuring of child care in America.

What was once a service run primarily by women for women and children, often in homes and churches, now has evolved into an industry.

The number of early childhood centers has dramatically increased over the past decade, as has the range of services. The choice was limited only a few years ago to day care for extended hours and preschool programs for two and a half hours, two or three times per week.

This was before the majority of women entered the workforce.

Today, only ten percent of the families are considered traditional; that is, father is the breadwinner and mother stays home with the children. This has caused a market for child care never before seen in the United States. Professional training programs abound in most colleges and universities. Short term training for assistant teachers and aides are incorporated in many adult education programs and high school child development classes.

Programs for infants and toddlers, before and after school care and sick child care exist in some states. Corporations, in order to maintain a stable workforce, are beginning to recognize the effect quality child care has on productivity. And even Congress is addressing the issue through tax benefits to corporations and maternity leaves for parents.

Child care has become the new benefit of the '80s.

The new focus on child care has also put centers at risk legally. Before, in informal settings there were few law suits.Today, with the increase in insurance rates, based on rare cases of child abuse; accidents in centers and personnel litigation, all employers, employees and parents have become sensitized to legal issues.

This booklet is written as a quick reference for busy persons interested in the legal issues in child care. This booklet in no way pretends to be the legal authority on issues, only a practical guide. The items included are selected from most frequently asked questions during the Legal Issues Seminars attended by administrators, teachers, corporate employers and parents, held by CHILD DEVELOPMENT DESIGNS, INC. during the summer of 1986.

A number of individuals must be recognized in the publication of this booklet: Walter J. Federlein, an attorney who understands the child care industry edited the text; Beverly Schumer, keynote speaker at the Legal Issues Seminars and last, but far from least, Clem Cleveland, consultant on preparation and publication of all of our publications. Without their combined expertise, it would be impossible for me to share this information with the child care industry.

Anne Cairns Federlein
October, 1986

CHILDREN'S ISSUES

It is difficult to estimate the number of children in some kind of child care setting today. We can only give rough estimates, based on the settings that are licensed in each state. The data suggests that well over 70% of children receiving supplementary care are in some kind of family day care setting. There are approximately one million licensed positions for children in care, but more than ten times that number in a wide range of child care arrangements. (Landsburgh, 1984)

Quality care is a central issue in the business of child care. Employers ask prospective employees to define "quality care;" parents attempt to find "it" and researchers consistently seek a working definition.

Early childhood professionals who have worked in centers have many definitions of quality care. The common elements defined are:

- Nurturing environment
- Trained staff in child development and methods
- Appropriate curriculum for age of child
- Safe, well maintained physical environment
- Adequate space, materials and equipment
- Strong communication with parents

David Weikart, of the High Scope Foundation, in Ypsilanti, Michigan, has collected data for over twenty years on a group of preschool children who attended the Perry Preschool.

His latest research results provide guidelines for quality care and financial justification for funding early childhood centers. (Schweinhart, Weikart, Larner, 1986)

Providing and maintaining quality care in early childhood centers remains a challenge for child care providers. As operating costs escalate, many centers are forced to make hard decisions about staying in business and/or diminishing services. Once the decision is made to remain in business, there may be no choice except to diminish services . . . but never quality. When quality is sacrificed, children suffer and often the staff is legally at risk.

RECORDS AND RIGHT TO PRIVACY

Records on children and families must be kept strictly confidential. Access to records must be kept to a minimum number of persons, such as immediate family, agencies with legal authority and a few authorized employees in the center.

The Family Educational and Privacy Act of 1974 requires records be kept confidential and access limited and all centers receiving federal funds must comply with the regulations of this act. If handicapped children are enrolled in the center, additional requirements from Public Law 94-142 and comparable state special education laws are also in effect.

There is an exception to the law, however. When there is a suspected case of child abuse and/or neglect, the laws governing abuse and neglect cases have precedence over The Family Educational and Privacy Act. Employees who report abuse and neglect cases and release information on the child are granted immunity from liability.

MEDICAL CARE

The medical care and treatment of children in early childhood centers is, for the most part, regulated by state child care licensing regulations. Four areas of medical care and treatment are stressed in the regulation of centers.

1 – Health requirements of all employees in the center

2 – Administration of medication

3 – Management of emergencies, either accidents or illness

4 – Treatment of nonemergency accidents or minor illnesses

Each center must have written policies and procedures for emergency and nonemergency care, in order to respond quickly and consistently. These policies ensure the child's safety and health.

Litigation against administrators, employees and board members will very likely follow any determination that injury or damage results from procedures which were not carried out. Failure to

fill out accident reports or to report suspected or actual child abuse cases to the proper authorities could also result in a law suit.

Administrators must be sure all employees have passed a Tuberculosis test, be free of communicable diseases and not have any health problems preventing the active care for children. Accurate medical records must be kept on staff, as well as children.

Administering medication in emergency or nonemergency conditions remains a controversial subject. Licensing requirements must be followed carefully and incorporated into policies and procedures of the center. It is suggested that no medication, either prescriptive or nonprescriptive (such as cough medicine or aspirin) be given without permission of a physician and custodial parent. Written parental permission for each medication and illness should also be kept on file and reviewed at short periodic intervals by a responsible management person for change, obsolescence or continuance.

A separate chart listing the child's name, medication (including dosage information), time administered and teacher's initials is to be kept posted in an accessible area for staff. This provides evidence that medication was given as parentally directed in case there is a question in the future.

All medication should be labeled with the child's name, physician's name and phone number, name of drug and instructions for administering the drug. This prevents giving the wrong medication to the wrong child ... especially during seasons when many children are recovering from a wide range of illnesses at one time. Of course, keep all medication locked and out of reach of children and unauthorized staff. When all medication is taken, give the empty container to the parents.

Centers must have detailed procedures on file for emergency treatment. Parents, staff and administrators must be knowledgeable of what will happen when a child is seriously hurt or ill. Detailed consent forms signed by parents must be on file, including information on insurance, preference of physician and hospital, and where parents may be reached.

The staff should be trained in First Aid procedures and have their training evaluated and updated on a regular basis. It is important to respond to emergencies quickly and effectively. First

Aid materials should be kept in the office, or an area accessible to staff. The staff must be reminded, on a regular basis, where the equipment is stored.

The names of staff trained in First Aid should be posted in the office and responsibilities should be listed under each name. This information must be kept where it is easily found and read regularly.

When an emergency occurs, the parent must be reached and notified of the details. If it is not a life threatening situation, ask the parents to provide transportation and medical treatment. According to licensing regulations, parents must be involved and if they are not, the treatment procedures could lead to litigious action.

A written consent form for grave emergency medical treatment dated and signed by the parents should be on file and updated every six months. The names of physicians, hospitals and procedures for transportation, including ambulance service, should be listed on the consent form. The more a parent is involved in making medical decisions for their child, the less chance of legal action at a later date.

If the parent is unable to provide transportation, or if the injury is too severe, the administrator should call an ambulance.

The responsibility for transporting the child safely to the hospital then rests on another party who may have greater medical training and equipment, allowing direct and constant communication with doctors from the time of arrival at your site. If however, the injury is life threatening and waiting for an ambulance puts the child further at risk, the administrator must then designate who is responsible and what car should be used for transportation. This responsibility is posted in the emergency procedures of the center.

It is important to minimize the number of employees involved in emergency treatment. Identify specific employees trained in First Aid. They can be hired with a clause in their job description about transporting children in case of an emergency and may be covered with separate or additional liability insurance coverage paid for by the center.

Treatment of children who are ill, but do not require emergency treatment must be on file at all times. These treatment and reporting procedures are similar to the policies described for emergency treatment at the center.

When a child becomes ill, the parent must be notified and decide whether the child should leave the center. Transportation should be provided by the parents and the consent form should authorize routine medical treatment by a nurse or physician.

A quiet place in the center is designated as the area for sick children until they are picked up by parents. This place should be away from children and activities, but accessible for staff, in order to carefully watch the child.

In the case of a child having a chronic medical condition, such as allergies, it is important that the information be in the records and also posted for the staff to refer to at all times. If special treatment is needed, directions should be included on the chart. If the child has a health impairment that could lead to emergency treatment, directions must be posted under the child's name in an obvious place for staff to see. Identify specific personnel to administer treatment. Incorrect treatment could lead to parents filing a law suit claiming negligence on the part of the center.

It is the responsibility of the center to record all medical information on the child, have detailed consent forms on file, identify staff to perform First Aid procedures and have all emergency and nonemergency medical procedures posted in view of all staff at all times.

CUSTODY ISSUES

Because custody is an emotionally laden issue and the number of children who are involved in custody battles is increasing, early childhood centers must have clearly defined policies and procedures for handling adults and children.

There are two kinds of custody issues affecting centers:

1 – When parents no longer live together but are seeking legal and/or physical custody of the child.

2 – When the state has removed a child from the home and has removed legal and physical custody from the parent. Often the parent asserts the right to see the child or take the child home for occasional visits.

There are two definitions of custody:

Legal Custody is the right of an individual or agency to make decisions on behalf of a child in matters:

1 – where the child shall live
2 – medical treatment and
3 – education.

Physical Custody is the right and responsibility of an individual or agency to provide immediate care and a present household or care facility for the child. Physical custody has only some of the rights or attributes of full legal custody.

Because of the seriousness of a child being caught between two adults vying for custody, either parents in the process of a divorce or a parent and a foster parent when the child is a ward of the state, the guidelines must be clear cut and as concise as possible.

At the time of enrollment, it is suggested that a document be signed clarifying the status of the child's custody. In the case of court proceedings, duplicate copies of the court decree or separation agreement should also be on file. Additional names, relationships, addresses and phone numbers of all persons authorized to pick up the child should be included. Date the document and have it signed.

When the child is picked up by an unfamiliar person to the staff, ask for a driver's license or a piece of identification with a picture and check it carefully.

The administrator can, in no way, decide on who has legal and/or physical custody of the child. A statement should be given to all parents stating children will only be released to those listed on the emergency form by the adult who enrolled the child.

It is important to routinely update information in the file and if the custody information is changed, the revision should be signed and dated once again by the person who enrolled the child.

When an adult who is not authorized to have the child, arrives at the center, the administrator should state the policies and procedures of the center to the person. If necessary, show the copy of the court papers and assure the person this is how all custody cases are handled at the center.

If the person leaves the center, the administrator must notify the adult who enrolled the child of the incident. Make a written report for the file and have a meeting with the custodial adult to once again, clarify the arrangements. Document the meeting, date, sign and place in child's file.

If the unauthorized person does not leave the center and causes a scene, the administrator should call the police, if necessary. It is important to have a procedure to protect the child from a scene or the violent adult.

Legally the center is responsible for children who are not picked up on time. As long as the child is at the center, the staff is responsible for the child's welfare. If the child is left for an extended period of time without notification from the authorized adult, it is better to keep the child at the center rather than staying at a staff member's home. This may avoid a liability issue. If the child must be removed, it is important to contact the local police and inform them before taking the child anywhere.

If the child is picked up late on a regular basis, the case should be reviewed for possible inquiry of the parent or other action to satisfy the duty to detect or report possible neglect.

CHILD ABUSE AND NEGLECT

Most child abuse and neglect cases are covered under individual state laws and although they differ from state to state in details, the general principles are the same. The federal government, under Public Law 93-247 - The Child Abuse Prevention and Treatment Act, has influence over early childhood centers in a mandate to follow the child abuse and neglect law in their respective states.

Who must report a suspected case of child abuse of neglect?

The administrator must determine how many employees are mandated reporters and who is authorized to report voluntarily and list them in the center's handbook. The mandated reporters and voluntary reporters are viewed differently under the law and have differing immunity from liability. If there is a professional code of ethics mandating reporting of all suspected cases, it should be followed.

There are two levels of immunity for mandated reporters under the law.

Absolute Immunity is stated as "No person so required to report shall be liable in any civil or criminal action by reason of such report." This status precludes any legal action being filed against the professional making the report.

Qualified Immunity is stated similarly with an added clause "so long as such report is made in good faith." This means that the party suing the professional has the burden to "prove" actual malice or acts constituting bad faith. The person is not liable for errors in making or failing to make the report if in good faith.

Voluntary reporters are usually not given any immunity or qualified immunity and the person can be sued for making the report, whether or not it was made in good faith. The apparent intent of the law is to prevent persons making malicious claims and to curb the frequency of reporting.

What are the legal penalties for not reporting child abuse or neglect?

Three types of legal liability can be imposed on the professional who improperly reports a suspected case of abuse or neglect or fails to file a report.

The first legal liability can be in the form of a criminal penalty, usually in the form of a fine, although criminal penalties have been levied in some states.

The second type is a civil judgment in the form of money damages on behalf of a child who was injured because of a professional neglecting to report, or improperly reporting, a suspected case of abuse or neglect. The person filing the suit must prove that the defendant was negligent, that the negligence was a direct cause of a later injury and that damage resulted.

The third type of liability is of a professional nature, such as loss of job, loss of license or a professional reprimand. Although the number of professionals who have been reprimanded by professional groups is limited, the number will increase as professional standards are enforced.

Voluntary reporters can also be sued in a civil action if they are responsible for not following professional ethics or procedures adopted by the center. The basis of the civil action would be for damages on behalf of an injured child or for the professional consequences for improper conduct.

The early childhood center is also at risk if there was a failure to properly implement policies and procedures in handling abuse and neglect cases.

It is imperative that centers establish policies and procedures that are technically legal. Ethical standards must be upheld and employees able to account for their legal responsibilities. The center should provide proper intervention and reporting procedures.

If this is not done, there is a risk of a civil action suit being filed on behalf of the injured child or caregiver claiming defamation of character, either slander or libel, if they are wrongfully accused of child abuse of neglect.

What should be included in the content of written procedures and policies on child abuse and neglect?

There are certain basic elements in reporting suspected cases of abuse and neglect. First of all, write a clear concise description of the legal, programmatic and professional responsibilities of all employees mandated to make reports. The procedure defines who the mandated and voluntary reporters are, states immunities from liability and penalties and waivers of privileged communications that apply to each category of reporters.

The second component is a clear statement on the definition of cases to be reported. The language should be based on the guidelines from the state agency that mandates such reporting. Frequently, staffers at state or federal agencies will assist in the proper language and guidelines for the center's handbook.

A third part pertains to the internal procedures of the center on determining what cases to report and how the report is to be

written. Usually the administrator is responsible for assisting the staff member in the task or a team is assigned to the case, as in hospital settings. In many states, the report is made officially by the administrator of the center with information provided by the professional involved.

Reporting a child abuse or neglect case is one of the most difficult decisions a professional in a child care center must make. Be sure to notify the childs caregiver BEFORE the report is filed with the state agency. If there is an objective well founded fear of risk to the child, make an immediate report and ask for temporary removal of the child to a safe place until the agency receiving the report can assume physical custody of the child.

When filing a report use these guidelines. First, keep all records relevant to a future court appearance. All statements must be factual and avoid subjective conclusions. Also avoid statements concerning the personality of the child or caregiver unless they are factual. They could be the basis of a claim of libel, slander or defamation of character. Employees involved in the case should keep detailed personal notes for future court depositions. Usually these notes are separate from the records that are gathered by the court on information about the child.

An overview on the procedures of filing a child abuse or neglect case should be stated in the policies and procedures not just the detailed procedures for how to file a report. Thus the employees will have an overview of the state agency and how the report is handled. The staff members must be given information on their role in the total system and implications for future involvement.

HANDICAPPED CHILDREN

Handicapped children in early childhood centers are regulated by two federal laws if the center receives any federal financial assistance.

Public Law 94-142, referred to as The Education for All Handicapped Children Act, provides services and education for all handicapped children three through eighteen years of age. State laws expand on these ages and many now include programs for children from birth through twenty five years of age.

Section 504 of the Rehabilitation Act of 1973 prohibits any discrimination on the basis of handicap by any program that receives or benefits from federal financial assistance.

These two acts have provided the basis for many new programs for preschool handicapped children across the United States. Head Start classrooms have been mandated to include ten percent handicapped in their classrooms as a result of these acts.

Centers that do not receive federal financial assistance are subject to the least regulation by federal and state laws. In general these centers are only subject to those provisions concerning handicapped children contained in the state licensing regulations for early childhood centers.

Early childhood centers that provide programs for young handicapped children include many of the same rules and regulations as for nonhandicapped children in the center. For example, in providing health and safety standards and an educational program, many of the same policies and procedures apply to both groups. Some adaptations in transportation procedures, equipment and safety procedures are always needed.

Contact the state department for specific guidelines and licensing requirements for centers serving young handicapped children. When these additional measures are taken, the quality of the center improves for all the children enrolled.

ORGANIZATIONAL ISSUES

The organization of the early childhood center is paramount for efficient, effective long term and day to day operations. When the center is conceived the principles involved must determine if it is to be a sole proprietorship, partnership or corporation and have a profit or nonprofit status. According to Kotin, Crabtree and Aiden (1981), definitions are:

Sole proprietorship is one where a single individual is engaged in some self-employment activity. However, even in that basic form, there are certain business regulations and other legal rules which apply. Therefore, it is classified as a form of organization in the legal sense even if there is, in fact, no real "organization" of any sort to support the individual.

A Partnership is the type of organizational form most oriented toward the needs of people who do not want the total responsibility involved in running a center as a sole proprietorship, but who also do not want the complexities involved in running a center as a corporation. The law recognizes two different types of partnerships: General partnership and limited partnership.

General Partnership is when two or more individuals associate together for the purpose of engaging in any business activity, including running a day care center, and their association is based on equal status for each partner. This premise of equality means that each partner:

- has an equal responsibility with regard to the center's debts or other obligations.
- has made equal contributions to the organization.

Limited Partnership is "limited" with regard to the all important matter of financial responsibility. A limited partner is responsible for the debts and other obligations of the center only to the extent of the contribution of assets which the partner originally made.

In order to qualify for such limited liability, however, the limited partner must give up most of the rights which the general partners have. In particular, the limited partner has no voice in the

daily decisions concerning the center and cannot participate actively even in major decisions unless they concern matters which have an important effect on the center's finances.

A corporation is, in most situations, the most appropriate structure for operation of a day care center. The explanation for this conclusion lies in the many special advantages the law confers on people who conduct any sort of business through the corporate form.

The corporation is a structure involving two categories, profit and nonprofit.

Non profit status does not infer that a profit cannot be made. It is both permissible and indeed common for corporations organized as a non profit business to make a profit. The essential differences concern the purposes, powers and responsibilities for which the corporation is organized and operated.

Issues to be considered in the formation of the center are the tax status of the center, the nature and extent of liability for the organizers and the ease of operation of the center. For example, before a structure is decided upon these questions should be answered. What are the tax obligations of each structure? What is the personal financial liability of the owners? What is the procedure for selling the business? What will the daily tasks involve and who will operate the center on a daily basis?

As the plans for the center are developed, it is important to hire an attorney and accountant knowledgeable in child care centers to counsel on the legal and financial ramifications of the organization.

INSURANCE

The insurance crisis in child care is well known throughout the United States. Centers have been caught in a no win situation with escalating insurance premiums or cancellation of policies based on a perceived increase of litigation in child abuse cases in centers. Professionals in early childhood question whether these increased premiums or cancellations of policies are based on actual statistics or on fear by the insurance industry.

Regardless of the reason for the increases, the consequences have been felt by all in the business. Many centers have gone out of business due to increased insurance costs, many can no longer get coverage as their insurance company has gone out of business and too many centers are risking operating with no insurance.

Daily the insurance picture changes in child care centers. For an up to date report, contact the following agencies:

National Association for the Education of Young Children
1834 Connecticut Avenue, N. W.
Washington, D. C. 20009-5786

Child Care Action Campaign
99 Hudson Street, Room 1233
New York, N.Y. 10013

When considering insurance for the child care center compute the amount of potential loss and the degree of potential risk in the business. Potential loss encompasses what could be lost if a specific event or events occur. Degrees of potential risk are the varying likelihoods of some event happening, such as a child being seriously hurt at the center. If risk is high, the need for a substantial amount of coverage is obvious. However, in many areas depending on the location and building, the risk is low; therefore, vary the amount of coverage needed in the different categories of insurance.

Liability insurance may cover any of a number of risks. Some are as follows: Legal costs when law suits are incurred, medical expenses at the time of the accident, bodily injury from an accident and damage to property of another person when an accident occurs. The insurance may limit the amount paid for each person on each accident, such as $50,000 per person and $200,000 per accident.

Automobile insurance is mandatory for centers transporting children in vehicles owned by the center or employees. When the center does not own a pool of vehicles, there is a high risk created by employees transporting children in their own cars or vans. Therefore, it is recommended that alternative transportation be used, such as taxis or other persons given authorization by parents to transport their child.

Workman's Compensation is another category of special insurance. In most states this insurance is required and is not an option. Most state laws do have an exemption for certain classes of employers with a small number of full time employees.

The kind and amount of benefits available to employees covered under this insurance are determined by state law. The employees are compensated for injuries arising out of and in the course of employment, either on or off the premises. Reimbursement for injuries is made through Workman's Compensation Insurance to the employee and usually the employer can not be sued for further damages. The premium for this type of coverage is based on the number of employees in the center and losses paid.

Fire and theft insurance can be purchased together or separately, with theft insurance usually being a very expensive option. Fidelity bonds protect the center against wrongdoing by employees. There are three kinds, Individual bonds, Schedule bonds and Blanket bonds.

Health insurance is a luxury item offered to employees in the child care business because of the expense and the turnover in employees. Usually a package covers basic medical and hospitalization costs and perhaps prescription coverage. A more detailed plan might include major medical covering serious long term illnesses and disability income. This covers a certain percentage of salary when a long term disability occurs. Because of the low wages in child care, the cost of this package is almost prohibitive.

CONTRACTS

Contracts are a legally enforceable agreement and simple contracts contain three essential elements: The offer or proposal; the acceptance which is the other parties expression of intention to assent and the consideration which is the price or value each party exchanges.

Oral contracts may be legally binding as are some contracts without written notification in certain circumstances. An exchange of money is not necessary for a valid contract to be made.

If the contract is not performed by one or both parties, it may be a breach of contract and potential damages may be incurred and claimed.

Formal written employee contracts are usually only offered to teacher or administrative positions and to prospective employees who have an impact on the smooth running of the center. Because of the high turnover in centers, many administrators offer oral contracts of employment.

LIABILITY

The full issue of liability is complex and impractical to discuss thoroughly at this time. However, there are some guidelines to assessment of liability to parties that one should know.

Three common types of legal relationships in child care centers are: The master and servant or employer-employee relationship; the employer-independent contractor relationship, such as hiring an attorney or psychologist on an interim basis, and the principal-agent relationship.

There are two general categories of liability in child care centers – civil which includes contract and tort liability and criminal, such as tax fraud or criminal embezzlement.

In determining legal responsibility one must determine the relationship of parties and their acts in the situation. This depends on employment relationships in the center. The degree of liability will be determined largely from the legal form chosen when the organization was formed.

It is important in all legal matters to make an appointment with an attorney familiar with child care centers for an opinion. The cost of the appointment is well worth it!

LICENSING

In every state child care centers are subject to licensing by the state. Annual visits by licensing consultants ensure the center is following the rules and regulations defined in the license. Although centers in certain buildings, such as churches, may be exempt from the state licensing procedures; nevertheless, the vast majority of child care centers seek state licensing.

Knowledgeable parents in the market for child care request licensed centers as they ensure more stringent rules and regulations than other forms of licensing, such as through departments of education. This has caused considerable debate among private owners of child care centers in many states.

As public schools hold regularly scheduled classes for preschoolers, they can be included in the rules and regulations for elementary schools by the department of education. These rules are far less stringent and less costly to run the program. Most public school programs do seek additional licensing from the department of social services anyway. However an interesting legal question arises concerning the different rules and regulations, depending if the program is public or private, for the same population of children.

In this day of rising costs it would not be surprising to see the issue before the courts in the future.

Licensing requirements from social services define staff/child ratios; staff qualifications, record requirements, physical space for each child, both indoor and outdoor equipment needed.

When a complaint about a center is filed with the state department there are differing procedures in each state. It is important for the administrator to be knowledgeable in the due process of revocation of the license. Generally speaking, the process contains a hearing to contest the state's decision to remove or deny the license. This hearing is more informal than a trial in court but follows procedural rules in an office rather than a courtroom. Legal counsel can be used for the hearing. The final decision is usually not made at the end of the hearing but rather in a few weeks.

Operating without a license in a state is considered a criminal offense and is punishable by a fine or imprisonment or both. This is a rare occurrence, however. Usually the state avoids this action unless the charge is very serious. When one is charged with a criminal offense, legal counsel must be obtained by the defendant or it will be provided by the state.

Obtaining a license to operate a child care center is very important and should be done as soon as concrete plans and a site have been chosen for the center. Failure to do so is punishable by law. Because of the burden on state systems, often the licensing procedure takes a long time and is cumbersome. In many states, the minimum time requirement can be as long as six months. In order not to delay the opening of the center, it is important to be timely in applying for a license.

PERSONNEL ISSUES

Knowledge of the law and documentation are two entities directors should understand. For example, what questions can be asked in an interview? What procedures are legal in terminating an employee? What kind of documentation needs to be kept and for how long? Knowing the right answers to these questions can save administrators time and money in future legal fees!

Time is of the essence when an administrator needs to fill a position and remain in compliance with staff/child ratio according to licensing requirements. Therefore, maintain contact with the local colleges and universities, professional groups and local and state agencies in order to advertise the position.

Advertising in newspapers usually is less successful when one is seeking a qualified trained child care provider. It is not necessary to have the prospective employee fill out an application for employment, the submitted resume usually contains all necessary information. Additional information can be obtained during the interview.

INTERVIEWING

When interviewing prospective employees ask open ended questions. Cite examples from daily happenings in the child care center and ask the person to describe the procedure for handling the situation. The interviewer can begin to understand how the applicant thinks, acts and understands the nature of the child care business.

If time permits, ask the applicant to visit the class and spend time with the children. Watch the interactions of the prospective employee with children, parents and staff. At the end of the period listen to the questions that are asked. What kind of training has the person had? Does it interface with the philosophy and practice of the center? Often a second interview is needed for a teaching or administrative position.

Topics to avoid – and in fact, may be illegal – during the interview process are those addressing:

- National origin or ancestry
- Age, marital status, number of children
- Handicaps
- Race, sex or religion
- Type of military discharge
- Arrests, court or conviction record
- Membership in organizations

Areas that the interviewer can discuss are:

- Ability to perform job related functions
- Educational background and training
- Work experience
- Community work
- References
- Informing the applicant that any misstatements or omissions of material facts may cause dismissal.

The Civil Rights Act of 1969 Title VII (amended by the Equal Employment Opportunity Act of 1972) is the federal anti-discrimination law. It applies to all employers of fifteen or more employees and prohibits discrimination against prospective employees because of race, color, religion, sex or national origin for any condition of employment. Child care center administrators must post a notice stating they are an equal opportunity employer and how charges can be filed with the Equal Employment Opportunity Commission. Child care centers that employ more than one hundred employees must submit an annual report of racial, national origin and sex in each category of jobs.

DISMISSAL

Dismissal of an employee is based on procedures printed in the employee handbook and available to all in the center. Documentation is the most important component in the dismissal process. A file must contain the employee's history and circumstances of concern, the date and content of each meeting with the employee to discuss conduct and/or occurrence.

If the records are concise, show just cause for dismissal and the proper procedures taken, future litigation by the employee will likely be unsuccessful. Recommended steps are as follows:

Steps in dismissal include first of all, informing the employee of the problem and giving a verbal warning. Offer to assist in rectifying the situation; document the meeting, file information and give a copy to the employee. The second warning should be in writing to the employee, again stating the grievance and the third written memorandum states the consequences if the actions persist. If there is no change, the fourth notice is the termination notice. It is to be written and includes the specific reasons for dismissal. Keep all notices in a single file for future reference.

Immediate dismissal is needed for certain misconduct in child care centers, such as theft, use of drugs or alcohol at the center or abusing a child. Give the employee a verbal dismissal and follow up with written notification, sent by certified mail immediately. Keep a record in the file.

WAGES, BENEFITS AND CONTRACTS

The child care industry provides a dilemma for workers. The business is dominated by women in low paying jobs causing a high turnover in the business. In some centers the turnover is 65 to 75 percent each year. The job categories offer little advancement in pay or status and do not allow financial rewards for additional education, training or experience in the field.

Often the four year university graduate begins work in a child care center as a teacher for $5.00 per hour with no benefits, for twelve months a year with no contract. Assistant teachers and aides usually receive minimum wage or $4.00 per hour based on an hourly rate. Nearly all employees are part time in order to avoid paying benefits.

In the state of Michigan, as most states, it is not unheard of for a teacher to earn the sum of $120 per week for 30 hours of employment. This compares with a teacher with the same qualifications employed by the public schools for approximately 30 hours per week at $18,000 for a nine month contract with additional benefits. This is a discrepancy of $10,200 between the two groups.

not including the financial rewards of benefits. It is no wonder why child care centers have a high turnover rate.

Caroline Zinsser wrote a document in September, 1986, *Day Care's Unfair Burden: How Low Wages Subsidize a Public Service*, published and disseminated by the Center for Public Advocacy Research in New York City. She has recommended eleven recommendations for changes in the day care system.

1. Child care workers should be paid equal pay to public school teachers.
2. States should raise reimbursement rates for subsized places in child care centers, earmarked for salary increases.
3. Increase the number of parents eligible for subsized child care.
4. Child care benefits must be provided to child care workers.
5. Uniform salary schedules and job categories must be statewide.
6. Establish career steps.
7. On job training should be financed by the government.
8. Comprehensive planning, provision and funding for all programs with young children should be established.
9. Child care should be recognized as providing educational and custodial services.
10. Public school teachers in early childhood should have certification in preschool through third grade.
11. Child care workers should be organized either through unions or professional organizations.

The child care industry is in a time of transition from a low service industry to suddenly being thrust into a high service business. Growth is always painful and the industry is feeling the growing pains as litigation, personnel and insurance problems take up the majority of time in an administrator's day.

As more families need child care, professionals begin to question the quality of care for children in institutional settings for long periods of time, the pay and working conditions of child care

workers. How can the child care industry extend the range of child care services so that infant, toddler and sick child care will become commonplace in the '90s?

In a few years, solutions to the present day problems through the efforts or lack of efforts, by the child care industry, private industry and government will be in effect. We cannot afford the luxury of not addressing these serious deficits in the child care industry . . . the future of our children and that of society are at stake.

Legal issues in early childhood centers are but a small part of a problem that permeates every fiber of our society.

As this edition launches a series of booklets on the child care industry, the hope is that through educating parents, workers, legislators and those adults involved with children, all child care facilities will develop into nurturing, educational programs employing a highly respected and paid staff.

The decisions made today . . . determine tomorrow.

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